thing he found in favor of the corporations was that the assessments, instead of being at full value, should be at that percentage the same locality is assessed. Justice Herrick affirmed Referee Earl's report pro forma, so that an immediate appeal could be taken to the Appellate Division.

This appeal was argued there in December last, and to-day the Appellate Division handed down its decision reversing the order of Justice Herrick, which approved Judge Earl's report, and vacating the

politan Street Railway Company. The litigation involves the proceedings of fortyall the street railway, gas and electric companies of the city of New York. The

to about \$137,000,000. The total assessments in the State affected by this decision approximate \$300,-000,000, and as three years' taxes are now due the total valuations affected exceed \$1,000,000,000, and the tax on the same which the State has at stake is upward of

The chief counsel for the corporations was David B. Hill. He took as his main contention the home-rule point, viz.: Under the State Constitution taxation and repreientation go hand in hand, and the assessors of real estate under the Constitution must be appointed by the people of the locality; consequently the appointment of a State board to value local real estate or special franchises which are declared to be real estate by the statute is uncon-

stitutional.

It is mainly upon this point the court declares the law to be unconstitutional.

Mr. Hill was chief counsel before Referee Earl and Justice Herrick, but he did not appear on the argument before the Appellate Division. The main argument in that court was by William H. Page, Jr., representing the Metropolitan Street Railway Company.

Legislature recommended that the Special Franchise Tax law be repealed as inequitable and a constant source of litigation.

The State will appeal from the decision to the Court of Appeals.

THE PREVAILING OPINION. Chief Justice Parker, in his opinion de-c'aring the law unconstitutional and re-versing Justice Herrick's affirmance of Earl's report, reviews the pro-

referee Laris report, reviews the provisions and says:

The first question presented by this appeal is whether the provisions of the law which authorize the assessment and tax complained of are violative of Section 2 of article 10 of our State Constitution. Such act, being Chapter 712 of the Laws of 1890, first amends Section 3 of the Pax law by adding to the subjects of taxation therein specified the right of franchise to construct, maintain or operate upon, over or under the streets or public places of any town or municipality in the State the tangible property thereon which was already specified in the section as being real estate and therefore assessable. The value of such tangible property, plus the value of the right to maintain and operate the same, is thereafter to be assessed and taxed together and is denominated in the act as a "special No criticism is made that this addition to the taxable property named in the section

and is denominated in the act as a "special franchise". No criticism is made that this addition to the taxable property named in the section violated any provision of the Constitution: but the act further provides that the assessment of such a pacial franchise shall be made by the State isoard of Tax Commissioners. That board is required to fix the valuations of all such special franchises wherever found in the State, and to report such assessment or valuation to the proper local assessor, and such local officer is required to place such special franchise upon his roll of the taxable property in his district, at the valuation so received, and the tax is thereupon levied and collected against the same in the same manner and for the same purposes as against the other property on such roll.

This provision, it is claimed, violates the above cited section of the Constitution, for the reason that it deprives the local assessors and directs the performance of the same duties by officers who are not chosen by the electors or any authorities of such locality.

Decision which governs this Case.

DECISION WHICH GOVERNS THIS CASE

electors or any authorities of such locality.

DECISION WHICH GOVERNS THIS CASE.

In the Raymond case (37, N. Y., 428), this section, which is familiarly known as the home-rule provision of this Constitution, received judicial construction in its application to the subject of assessment for the purposes of taxation.

In that case the Legislature, by Chapter 410, Laws of 1867, sought to transfer the duties of the Commissioners of Taxes and Assessments for the city of New York, who were officers appointed by local authorities, to a hoard of five Commissioners appointed by the Governor by and with the consent of the Constitution of 1846 such duties of assessment were, and for a long time had been, performed by district assessors. By various acts passed in 1850, 1857 and 1859 the Legislature had regulated the performance of such duties and changed the officers who were to perform them. But in each instance the selection of such officers who were to perform them. But in each instance the selection of such officers who were to perform them. But in each instance the selection of such officers who were to perform them. But in each instance the selection of such officers who were to perform them. But in each instance the selection of such officers who were to perform them. But in each instance the selection of such officers from the city to the State, and it was at once challenged as being violative of the court in the case above cited, and it was at once challenged as being violative of the court in the case above cited, and it was there distinctly held as follows: That beyond controversy the office; that the duties imposed by the act upon the new board, although broader in their extent. Erre essentially the same as those exercised by the city assessors in 1846; that the plain intent of the section of the Constitution in question "was to preserve to the localities the control of the official so far as I can ascertain, and would. I think, be conceded by the respondents in this case has never been reversed or mediated. S

case where the conditions were in all respects similar. But in what respect does that case differ,

FRANCHISE TAX LAW INVALID.

APPELLATE DECISION REVERSES REFEREE EARL, 3 TO 2.

The Right of the State to Tax Franchises as Provided For by the Fard Act is Not Decided for Assailed, but That Part of the Law Which Took Away From Local Assessors the Power to Assess Franchises and Constitutional—Dissenting Opinions—Comment—Cunneen to Appeal.

ALBANY, Jan. 20.—The Special Franchises as provided for by the act in question; and municipality in the State by the court; the decision declared unconstitutional by the Appellate Division of the Supreme Court of the Third Department.

The right of the State to tax franchises as provided for by the act in question is not decided or assailed by the Ourt; the decision declares unconstitutional that part of the law which was added by amendment to the original Ford bill, and which takes away from local assessing at the valuation put upon its special franchises and confers the power to assess the franchises and confers the power on the State Board of Tax Commissioners.

The decision is in the case of the Metropolitan Street Railway Company against the valuation put upon its special franchises and confers the power to assess the franchises and confers the power on the State Board of Tax Commissioners.

The helps the State Tax Commissioners.

The decision was begun before Supreme Court Justice Chaese Justice Kellogg also concurs in an opinion of his own. Justices Smith and Chester dissent in an opinion of his own. Justices Smith and Chester dissent in an opinion.

This litigation was begun before Supreme Court Justice Chaese questions. He appointed the late Chief Justice Chaese distinction in the fact that the account of the Farmachise and condition of the results of the Court of the Farmachise and conditions of the Court of the

But in no one of them do I find that the act was sustained upon the ground upon which the referee could sustain this act.

POLICE AND EXC. SE PRECEDENTS.

In the Draper case, 15 New York 532, which is one of the earliest cases to adjudicate upon this section, the validity of a law was in question which created a new metropolitan police district from the city of New York and three adjacent counties, and which provided for the approintment by State officers of the Commissioners therein, and abolished the existing police departments of the several municipalities within such district. That case sustained the act, on the ground that the State had authority to create new civil divisions for police purposes, and to administer through its own officers the duties and regulations prescribed for the same. It distinctly held that, had the act applied to the city of New York alone, it could not have been sustained, but it denied that the Constitution assumed that the subject of police was localized in the several cities and counties of the State.

It held that "as a political society the State has an interest in the repression of disorder and the maintenance of peace and security in every locality within its limits, and if from exceptional causes the public good requires that legislation, either permanent or temporary, be directed toward any particular locality, whether consisting of one county or of several counties, it is within the discretion as, in its judgment, the exigency of the existence of such causes." Hence it treated the authority of the State upon the subject of police as paramount over that of the localities, and substantially held that for such reason no exclusively local function had been interfered with. As to such functions there was, in fact, no right of homeroile to be preserved to the localities. And this is the principle which invades and controls all the cases acted upon by the court below.

In the "Capitol police case," 36 N. Y., 280, the act was held good upon the same principle. that legislation, either permanent or temporary, be directed toward any particular porary, be directed toward any particular of of everal counties, it is within the discretion of the Legislature to apply such legislation as, in its indement, the exigency of the case may require, and it is the sole judge of the existence of such causes." Hence it treated the authority of the State upon the subject of police as paramount over that for the localities, and substantially held that for such reason no exclusively local function had been interfered with. As to such functions there was, in fact, no right of home rule to be preserved to the localities. And at this is the principle which invades and controls all the cases acted upon by the court. In the "Capitol police case," 36 N. Y. 289, the act canced by the court of the case of Rathbone vs. With, 180 N. Y. 289, the case of Rathbone vs. With the subject of police for the city of Albany merely, and a very slight interference with th

INTARION OF LOCAL RIGHTS

Court House case."

INVASION OF LOCAL RIGHTS.

My analysis of those cases is made only for the purpose of ascertaining how far they sustain the principle upon which the court below has decided this case. Whatever criticism has been or may be made of any of them is quite unimportant to this case, so long as it is apparent that in either is the decision placed upon the ground that the infringement complained of was not sufficient to substantially imperit the principle of home rule. In many of them the functions of the local officer were entirely transferred, and in each of them the controlling principle has been that the act of the Legislature did not invade any right or function that was exclusively local in its character. In each instance it was held or assumed that the State had the paramount right to control the subject affected by the act, and hence that there was no invasion of local functions. As is said in the very excellent and scholarly brief submitted by the appellant's counsel, on this question, it has been the nature of the power sought to be conferred upon the State officers that has centrolled the decisions of the Court.

Whenever the courts were of the opinion that the act did not interfere with any functions that were exclusively local, then the act was sustained, even though it wholly abolished the local office and transferred its functions to the State or department officer. But whenever the functions affected by the act were exclusively local, whenever they did not come within the category of those over which it has always been recognized that the State, for the benefit of the State at large, has the paramount control, then any transfer whatever of suc' local functions has not been permitted, and therein lies the clear distinction between the "Raymond case" and those above cited.

TAXATION A Local FUNCTION.

It is practically conceded by the referce that the subject of excessioners of local

"Raymond case" and those above cited.

It is practically conceded by the referee that the subject of assessment of local property for local taxation is not a subject over which the State has paramount authority. As stated by him the assessment of property for the purposes of taxation has always in this State heen a function of local officers elected or appointed in the locality where they discharged their duties, and this system of assessment is intrencted in the Constitution to secure to the people of our race have always been tenacious.

Therefore, as against the position taken by the court below, no argument is needed to establish that proposition.

POWER OF THE STATE.

Therefore, as against the Position taken by the court below, no argument is needed to establish that proposition.

FOWER OF THE STATE.

A broader and bolder position, however, was taken upon the argument of this appeal. It was there said that no authority can be found for the claim that the assessment of property for local taxation is a function exclusively appertaining to local officers, and that the State has the same power to take from a local officer his duties and transfer them to a State officer, as it had to take from the Police Commissioners of the city of New York their duties and transfer them to officers of a department of State. In short, that its power over the subject of assessment is as paramount as is its power over all the several subjects referred to in the cases above cited, and that while the Constitution prohibits the State from filling a local office, which at the time of its adoption was filled by election or appointment by local authorities, yet it does not prohibit it from abolishing such local office to an officer for the State at large; that it may take itself the performance of any or all the functions of the local office, but it may not name the local officer to perform them; and, so far as the question now before us is concerned, this is upon the theory that the State possesses the absolute power of tax, and hence it may take to itself the assessing of property which is but an incident to the power of itaxation.

Evidently this theory annihilates Constitutional protection to the principle of home rule for local municipalities, and leaves very little importance of effect to the section in question. It is at variance with many decisions of the courts construing this section and is approved by none.

In the recent decision in this court of the Brenner case (67 Appellate Division 38) it was said: "It must be regarded as well settled that the purpose of the Constitutional provision in question is to secure to localities the fundamental right of self-government; that it protects all of t

Laxative Brome-Quinine Cures a Cold in One Day, Cures Grip in Two Days.—Adv.

of officers not elected by the electors of the locality or appointed by local authorities; that it is not the officer but the office, the existing duties and funds, to which the protection is extended and which cannot be transferred to an officer elected or appointed the research of an officer elected is a direct authority against sub-vew. As shown above, it declares that he plain purpose of the section warned for the plain purpose of the section warned for the research of the functions of which they warned any other construction would render the section in question, when applied or the cities of the State, substantially nugative. The object of the State, substantially nugative. The object of the section is execution. If the power to make such assessments may be now transferred to a State officer the control of the localities over that subject is as much taken away as if it were transferred to a local officer named by the State, and thus the purpose of that section is evaded. Clearly, the Kaymond case proceeds upon the theory that the duty of assessing local property for the purpose of the local assessors, and hence is authority for the claim that such duties may not be transferred by the Legislature to any officer whatever which is not chosen by the localities themselves.

We are left, then, with the single question of fact, neither of the local invasion of such rights, that the amount of property the assessment of which is transferred from local to State aportion of the whole that, as a matter of fact, neither of the localities in question is any material manner deprived of formal profile of the such property remains to the condition of such rights and the profile of the such asu

district the Legislature shall declare taxable for local purposes is the long-existing
and assured function of that office which
is sought to be preserved.
Therefore, when the Legislature deemed
is wise to add to the taxable list the so-called
special franchise, the duty of assessing it
devolved at once upon the local assessors.
Its creation at once brought it within the
scope of their official duties. By virtue of
the functions of such office it became the
duty of the assessors to assess it.

ASSESSING FOR FIRST TIME.

duty of the assessors to assess it.

ASSESSING FOR FIRST TIME.

It is true that the assessors have never heretofore had the opportunity of assessing such property. It has never been made taxable and so brought within the scope of their duties, but their right and duty to assess now that it has been made taxable, has always existed, and by appointing another officer to perform that duty the act in question directly invades the functions of such office and attacks the principle of home rule.

office and attacks the principle of home rule.

Moreover, a considerable portion of the "special franchise" consists of tangible property that has long been assessed by the local officers. In the city of New York alone it amounts to something over \$75,000,000. All such property the law in question withdraws from the assessment by local assessors. It is argued that such property is a mere adjunct to the franchise right to use it, and that as the duty of assessing such right may be taken away, the duty of assessing its adjuncts must go with it. As said above, this is a question of power in the Legislature, and I am unable to understand how that hody gets the power to withdraw the tangible property from local assessment by merely requiring it to be assessed with the intangible right to use it. It cannot do indirectly what it may not do directly. It has no more power to add it to intangible property and so withdraw it from local assessment than it has the content of the draw it from local assessment than it has the power to withdraw it directly from such assessment.

draw it from local assessment than it has the power to withdraw it directly from such assessment.

I am forced to the conclusion that so much of the act in question as provides for the assessment of a special franchise by the State Board of Tax Commissioners is unconstitutional and void.

I am not unmindful of the imporance of this question. The great interest which the taxpayers of the State take in this effort to subject to the burden of taxation a very large amount of property which undoubtedly is of immense value to its owners and the disappointment which will naturally accrue through its failure to them and to those legislators who evidently adopted this plan as the one best calculated to protect alike the owner and the public, is fully appreciated by me.

But this court does not enter as a pioneer upon the consideration of this question. Every principle involved in it has been settled by the Court of Appeals, and we may do no more than recognize and enforce such principles in their application to this case. As stated above, in my judgment the decision in the Raymond case absolutely dominates this case.

Justice Kellogg's Opinion. Justice Kellegg, in his concurring opin-

Justice Kellegg, in his concurring opinion, says:

It seems to me that the question of the Constitutionality of the act we are considering hinges wholly upon the question as to whether or not the assessment of property for general taxation is an exclusively local function.

The learned referee has found that the tangible property heretofore assessed by local assessors throughout the State amounts to \$76,555,225. The assessment of this, by the Legislative amendment to the General Tax law, was taken from the local assessors and the function transferred to a State board. No one can deny that this is a palpable violation of the Constitution, at least in some degree. The assessment by a State board of the franchises themselves—the intangible property of a corporation as defined by the amended act—presents, perhaps, another question. This property is not new property coming to the locality, but has always existed there, though it has never been locally assessed.

To assess this property judiciously or by the method adopted by the State board, the local assessors in most cases would need to go beyond their precincts. The property can hardly be said to be localized. For instance, a street surface railway, a telegraph, several incorporated villages and on the highways of intervening towns, must possess a franchise from each municipality.

The value of these franchises separately considered might be very great. The right to run cars on the highways of a town could only be valuable as connected with the right to run through the other municipalities. These franchises, therefore, are only links in a

chain. The chain may have great value, but the links have no value except for their being component parts of the chain itself.

It is obvious that to give a proper value to any link the value of the entire chain must be first ascertained and then an approximate apportionment would not be difficult.

But the value of the chain largely depends upon the earning capacity for the time being of the entire property of the coporation used to do the business which the franchises permit to be done and the value of the chain of franchises. ascertained in the mode adopted by the Board of Assessors—and no better mode has been suggested—requires a valuation of the entire corporate assets and a separate valuation of all the tangible property in each municipality and elsewhere situated, and then, by a process of elimination, the value of all the franchises together may be determined.

It is possible this might be done by local assessors, but in doing it they would be exercising something more than the usual local function of their offices. The appraisement by the local assessors of property in another municipality would, if permissible, be a function never before exercised. They could not be protected in so doing by any principle of home rule and if this is what would be required of them I do not see how their local functions could be disturized or diminished by the appointment of a State board to make this assessment.

The property to be assessed is not in its mature localized in any one taxing precinct. It is not property to be assessed is not in its mature localized in any one taxing precinct. It is not property for the purpose of taxation is a local function. So far I may agree with them and find ample, authority in the decisions of the Constitution when a sever exercised jurisdiction.

The appellates' counsel insist, and no doubt righly, that we may read into the Constitution such assessment is exclusively a local function in the sense that the State cannot interfere with it or confer upon officers appointed by State auth

TWO DISSENTING OPINIONS. In discussing the Raymond case depended upon in the majority opinion of Justice Parker Justice Chester says:

upon in the majority opinion of Justice Parker Justice Chester says:

While it was said in that case that: "There is no question but that the office in question is exclusively a city office," it was not there decided, nor could it have been, for the question was not up, that the function of assessing property for the purpose of taxation was exclusively a local function. The case is, therefore, not an authority for that proposition, nor do I know of any case that is.

I think the question is an open one and must be decided in this case as a new proposition. That the Raymond case is not conclusive on this question, it seems to me, is clearly indicated by the Court of Appeals in the latter case of Astor vs. the Mayor.

To hold that the Legislature cannot commit to a State authority the duty of valuing for the purpose of taxation tanzible property in the streets to the extent it is permitted by the amendment in question and under the circumstances existing here requires, in my opinion, an altogether too strict and illiteral construction of the Constitution.

I think the Legislature had the right not only to subject the large amount of intangible property existing as a part of these special franchises to the taxing power of the State, but also to provide, as it did, in view of the changed conditions arising from the advancement and progress of our people over those which formerly existed, for the assessment of this intangible and tangible property together, by State officers, and that in so doing it has still left to the localities as large a measure of home rule as they enjoyed in this respect when the local function of assessing property for taxation became part of our system.

So far reference has been had to the validity the content of the same and the state.

That the Legislature might properly give to the State board the assessment of the franchise seems to me of undoubted right. By this act the Legislature has in effect created a new office—a franchise tax assessor's, and to the extent of the assessment of the franchise, with duties not existing at the time of the adoption of the Constitution. These duties, too, are distinct from and independent of any then existing duties of local officers. An intangible franchise has never been the subject of assessment by local assessors.

intangible franchise has never been the subject of assessment by local assessors.

To assess these franchises, access must be had to the books of the corporation and to other data which it would be difficult, if not impracticable, to give to the assessors of every tax district in which the franchise existed. The duty, therefore, of assessing these intangible franchises, is, as I say, distinct from the duty of assessment of real and personal property.

The fact that this franchise is by the statute termed real estate and that the local assessors were at the time empowered to assess all real and personal property wit in their tax district does not affect the situation. Whether it be called real estate, personal property, or neither, is a mere matter of form.

The intent of the Legislature is plain to make taxable another species of property which had not theretofore been taxable, and to appoint State officers to assess the valuation of the same. But it is immaterial whether a new office has been created or functions have been added to an old office. In either case existing home rule is not invaded by the assignment of such functions to legislative appointees. There is preserved to the locality every function possessed by it at the time of the adoption of the Constitution.

In my judgment, therefore, the right seems

vaded by the assignment of such functions to legislative appointees. There is preserved to the locality every function possessed by it at the time of the adoption of the Constitution.

In my judgment, therefore, the right seems clear, both within the letter and within the spirit of the Constitution to give to the State Board of Assessors the power to assess the intanzible franchise.

By this statute, however, the tangible property of the corporation within the street, used in connection with the intangible franchise, is made a part of the special franchise which the State officers are empowered to assess. The Constitutionality of this provision prevents a more serious question. This tangible property amounts to upward of \$90.000 within the State.

It has heretofore, since its creation been assessed by the local assessors. It was so assessed at the time of the adoption of the Constitution.

By this act, this local function existing at the time of the adoption of the Constitution has been taken away from the local officers and given to the State board. By what rule of construction can this be justified? The intimate relution of the tangible property in the street to the tangible property to which it is an incident is seen at a glance. For many purposes they are legally inseparable.

But it is urged that the tangible and intangible are not inseparable from the value of the purpose of assessment. Possibly they are not absolutely inseparable. As shown by the evidence the value of the intangible franchise must be determined by taking the value of the whole property, tangible and intangible, and deducting therefrom the value of the tangible property in a prerequisite to the valuation of the intangible property for this purpose.

Their values and use depend upon each other. These values thus interdependent are given to the State board to determine. They are, therefore, reasonably connected for the purpose of assessment and texation. And this is all that is necessary to authorize the Legislature would not have proved to

Victory for the Act. Says Ford. Former Senator John Ford, the author of the law, says the Appellate Division does not declare the whole Special Franchise Tax law unconstitutional, but only that part providing for the fixing of the valuations of special franchises by the

State Board of Tax Commissioners in-stead of by the local assessors, as required by the constitution. Senator Ford says the local assessors can now go ahead and assess the franchises. In an interview to-day Senator Ford said, after he had read Justice Parker's decision:

Justice Parker's decision:

I consider the decision a pronounced victory for the act. It declares the amendment to the Tax law made at the extra session of the Legislature unconstitutional, but does not affect the validity of the tax itself.

As the Court says, when public franchises were declared to be taxable, as my original bill provided, it required no additional amendment providing for their assessment. It became the duty at once of the local assessors to assess them. This decision disposes of the last remnant of the amendments to my original bill, which were made at the extra session of the Legislature, and leaves the original bill upon the statute books in all its simplicity, fairness and effectiveness.

leaves the original bill upon the statute books in all its simplicity, fairness and effectiveness.

The other amendments made at the extrasession have already been nullified by a decision of the Supreme Court in Buffalo, as was pointed out in Gov. Odell's measure to the Legislature. That amendment provided for the deduction of payments made to localities in the shape of percentages on gross receipts, car license fees and the like from the franchise tax levied under the law.

Senator Brown, at my instance, offered an amendment to the bill when it was before the Senate at the extra session, limiting these reductions to such payments as were in the nature of a tax. As a matter of fact, the payments made by holders of public franchises to the city treasuries are not in the nature of a tax, and the Court properly held that they could not be deducted.

Hence the corporations are confronted with the original tax bill, and this undoubtedly is the reason for their anxiety to have it repealed. There is no doubt in my mind that the effect of this decision, if sustained by the Court of Appeals, will result in incalculable increase in the revenue to be derived from public franchises in the future.

So far as the operation of the law in the future is concerned, there is no necessity for additional legislation. Franchises will simply be assessed as other local property is assessed, and by the same local assessors, without creating any new officers, erecting any new machinery or imposing any additional expense upon the public.

HISTORY FROM FRANK PLATT

HISTORY FROM FRANK PLATT

Of Circumstance in Which the Bill and the Amendments Were Passed. Frank H. Platt of Boardman, Platt & Soley, chief counsel for the corporations

which attacked the constitutionality of the Ford-Roosevelt Franchise Tax law, said

which attacked the constitutionality of the Ford-Roosevelt Franchise Tax law, said yesterday:

The original Ford bill of 1800 simply changed the definition of real property in the Tax law. That definition already included the structures in the streets as real property, but did not include the intangible rights to use the streets.

One day in April, Gov. Roosevelt called a conference to consider the many pending tax bills. It was decided to suspend bills on the subject until the next session, to which a commission should report. At almost the last day of the session, without any notice of change of plan, the Governor called upon the Legislature by special message to pass the Ford bill. Under our constitutional provision, giving the Governor power to kill, without vetoing, all bills coming to him within the last ten legislative days, the power of the Governor of the Legislature at the end of the session is almost supreme. When the Governor in effect ordered the Legislature to pass the Ford bill, the Senate and Assembly only registered his will. The bill passed into his hands and he had thirty days in which to consider it.

A protest naturally went up from every corporation affected. It was claimed that the su idea action of the Governor was an interference with the usual right of interested parties to be heard. It was said by the New York city corporations that the local political conditions in that city were such that the Ford bill would be intolerable. As it provided no principle of valuing street franchises, they could be valued by local assessors according to their will, and their will would be Croker's will, which would always be measured by the corporations' willingness and ability to respond to his demands.

At the hearing before Governor Roosevelt he admitted the justice of these complaints, and recalled the Legislature into extra session to amend the bill. He recommended that the power of assessment be taken from the local assessors and placed in the State Board. Governor Roosevelt sent this recommended

announced, in the spring of their they were such as to astonish even the trust-busters of that day. It became at once apparent that no true valuations had been made, and that the valuations were all guesses. The corporations were right in objecting to such assessments and in attacking the validity of a law which had been passed as this was, and which expo el their property to such enormous arbitrary exactions.

The officers of all corporations interested, so far as I know, will approve and acquiesce in some statute taxing their property and rights justiy, equally and with reasonable certainty, but I doubt whether the courts will ever uphold any law unless it includes these elements, nor do I believe that the people of the State will understandingly approve any Ford law.

Cunneen Will Appeal.

Attorney-General Cunneen, the Demo cratic law officer of the State, will take the case to the Court of Appeals.

STATUTE LAW IN CHAOS, Says Milburn to State Bar-Address by

Japanese Jurist. ALBANY, Jan. 20 .- The State Bar Associa ion to-day heard President Milburn's annual address on "The Statute Law of the State." He said it was in chaos because of haphazard growth and arrested revision He urged periodical revision, consolidation

and indexing. Papers were read by Judge Lyman D Brewster of Danbury, Conn., on "A Commercial Code;" Heman W. Morris of Rochester, on "The Powers of Congress Over ester, on "The Powers of Congress Over Treaties," and Edward B. Whitney of New York, on "Further Reforms in Procedure."

To-night in the Assembly Chamber at the Capitol, before an audience comprising prominent Judges, legislators and officers and members of the association, Dr. Bo-ku'c'ire Masujima of Tokio, the eminent Japanese jurist, gave the annual address, on "The Present Position of Japanese Law and Jurisprudence."

Subsequently, at the Fort Orange Club, a reception was given by the association to

a reception was given by the association to Dr. Masujima and to the Japanese Minister, his Excellency Kogoro Takahira.

TO PUSH WORK AT ALBANY. Plan to Be Devised to Prevent Minerity

From Blocking Legislation. ALBANY, Jan. 20.—A conference of Re-publican Senators was held to-day which was attended by Senators Brackett, Elon R. Brown and Elsberg, and it was decided to appoint Senators White, Lewis, Malby and Raines a committee to confer with the Assembly Rules Committee and adopt methods by which it will be impossible for he minority to govern the proceedings of

the Legislature.
It was also suggested the rules be changed so as to permit the substitution of a Senate bill in the Assembly for a like House measure by a majority vote.

Kelsey Deputy State Comptroller. ALBANY, Jan. 20 .- Comptroller Nathan L. Miller announced to-day that he had appointed former Assemblyman Otto Kelsey of Geneseo, Livingston county, his Deputy State Comptroller, to succeed Theodore P. Gilman. Mr. Kelsey will assume his new office on Feb. 1. Mr. Kelsey was for six years a member of the Assembly. He took the nomination last fall for County Judge of Livingston county, but was defeated owing to local political conditions with which he had nothing to do.

to do.

ALBANY, Jan. 20 .- Gov. Odell is suffering from a slight cold. He remained at the Executive Mansion yesterday and to-day. He expects to be at his desk in the Executive Chamber of the Capitol to-morrow.

Pretty Good Investment Winter Overcoat at

If you're one of those particular folk who say: "No \$10 garment for mine," maybe you'll be interested if we tell you why they are only \$10. Well, when the mills shut down their looms on the making of winter overcoatings there's a bolt of cloth here, a 20-yard piece there and so on, making in all some hundred odd yards of cloth. We made a very low-priced offer for the lot, and our offer was accepted. Among them are fabrics usually put into overcoats that retail from \$18 to \$20. See the point?

WM. VOGEL @ SON. HOUSTON ST. BROADWAY.

CITY HAS ASSESSED FRANCHISES

AS REAL ESTATE, AND HUR-RIEDLY, EXPECTING DECISION.

New It Will Try to Collect Tax for 1908 -If It Turns Out That the Law It Knocked Out Altogether the Tax Rate Will Go Up Beyond Expectation.

The officials of the Tax Department here anticipated the decision of the court and put the deputies to work hurriedly a fortnight ago to make new and local assessments for 1903 upon the franchises as real estate, so as to tax them this year, whatever the result as to past years. The new figures were prepared in the last three days prior to the closing of the tax books. Appended are some of the revised "real estate" assessments as compared with the valuations put on the tangible properties of the corporations in 1899 prior to the passage of the

	1908.	1899.
American Dis. Tel. Co	\$110,000	\$80,0
Bleecker Street R. (Met.)	350,000	65,0
Broadway & Seventh Av. (Met.).	5,725,000	840,0
Central Crosstown R. R. (Met.).	570,000	85.0
esth Street R. R. (Met)	2,000,000	425,0
Christopher Street R. R. (Met.).	700,000	84.0
Christopher Afrect R. R. Carrie	14 800 000	5,788,00
Consolidated Gas	2 725 000	890.00
Dry Dock & E. Broadway (Met.).	1,400,000	100,0
Dry Dock & E. Broadway (Met.)	4,000,000	500,0
Eighth Avenue R. R. (Met.)	8,000,000	1,124,0
Empire City Subway	2,800,000	130,0
42d Street R. R. (Met.)	48 000 000	25,675.00
Manhattan Rallroad	15 500 000	2,225,0
Met. Street R. R	10.050.000	3,500.00
New York & Harlem R. R	3,575,000	1.722.0
New Amsterdam Gas	2,910,000	1,500,0
New York Central & H. R. R	2,200,000	815.0
New York Mutual Gas	2,200,000	2,000,00
New York Edison Co	8,275,000	550,0
New York Telephone Co	2,625,000	280.0
Ninth Ave. R. R. (Met.)	1,550,000	250.0
Second Ave. R. H. (Met.)	4,000,000	
Sixth Ave. R. R. (Met.)	3,390,000	400,00
Standard Gas Company	2,875,000	1.450.00
Third Ave. R. R. (Met.)	9,075,000	1,225,0
Mth Street R. R. (Met.)	760,000	10,00
28th and 20th Street R. R. (Met.) .	350,000	30,0
234 Street R. R. (Met.)	1,700,000	100.0
United Elec. & Power Co	980,000	175.0
Western Union	465,000	
Central Union Gas	1,040,000	200,0
Harlem River & P. C. R. R	3.515,000	2,225,0
Manhattan I. (Bronx)	3,700 000	1,944.0
New York & H. R. R. (Bronx)	3,790,000	2,820,0
New York & P. R. R. (Bronx)	1,000,000	425,0
Spuyten D. & P. M. R. R. (Brons)	1,900,000	1,100,0
Union R. R. Co. (Bronx)	2,360,000	525.0
Brooklyn City & Newton	985,000	275.0
Brooklyn City R. R	6.750,000	2,500,0
Brooklyn Union L	0.150,000	3,626,0
Brooklyn, Queens Co. & S	1.225,000	460.0
Br oklyn Union Gas	A,085,000	3,000.00
Long Island H. R.	1,500,000	575.00
Brooklen & Man. Beach R. R	825,000	880,00
Nassau Electric R. R	4.780,000	1,810,00
Brooklyn City R. R. (Quecas)	3,500,000	600,00
Long Island R. R. (Queens)	3,500,000	3.375,00
Staten Island R. R	1,380,000	1,576,0
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Comptroller Grout said	vesterd	ay the
in his opinion the local asse	MBOTE CO	ula no
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in his opinion the local assessors could now go ahead and tax franchises as real estate. At any rate they will try. "The case will be taken to the State Court of Appeals and if necessary to the United States Supreme

necessary to the United States supreme Court," he said.

President Wells and Commissioner Strasbourger said that the assessment on franchises in this city for the present year amounted to \$200,000,000, and that if the court had set aside the entire act the tax rate next fall would of necessity be much higher than the Tax Department had computed. The Tax Commissioners understand as the Computed for the tax that the standard the computed on the computed that the standard the computed that the standard the standard that the standard the standard that the standard the standard that the

computed. The Tax Commissioners understand as the Cyptroller does that the franchises are still assessable as real estate. As to the retroactive effect of the decision a representative of the firm of Sheehan & Collin, counsel to the Brooklyn Rapid Transit Company, said yesterday:

"The situation is this: The corporations which paid the tax under protest can recover it, those that paid without protest cannot recover, while the companies which have not paid at all need never pay the tax."

D. & H. INCREASES WAGES? Advance of From 5 to 10 Per Cent. In Pay of Employees.

ALBANY, Jan. 20 .- As a result of an application made several weeks ago by a committee of its employees, the Delaware and Hudson Company to-day announced an advance of from 5 to 10 per cent. in the wages of the employees on all railroads of its system. The raise will be received by every grade of employee from yard-

At the Delaware and Hudson offices in this city it was said yesterday by officers of the company that they knew nothing about any increased wage scale.

CUSTOM HOUSE CHANGES. District Attorney Jerome's Brother Appointed to a Place Like Theebald's.

Lovell H. Jerome, a brother of the District Attorney, has been appointed a special employee of the Treasury Department and has been detailed to the office of Collector Stranahan. Theobald, the diamond detective, held a similar poet.

Col. Storey, who is an inspector of customs, has been transferred from the law division to take charge of the seizure room. This change is equivalent to a promotion. George A. Cross, who for years has been Special Treasury Agent at this port, has been transferred to Niagara Falls, and it is understood Special Agent Rice has been understood Special Agent Rice has been transferred from the Canadian border to this city in Col. Cross's place.

HUNT FOR THOMAS DONOHUE. Disappeared on New Year's Day and the Police Are Searching for Him.

The police of the East 104th street station searched a hundred or more negro houses in that precinct yesterday to get a trace of Thomas Donohue, a well-to-do retired builder who disappeared on New Year's

builder who disappeared on New Year's day.

He lived with his daughter, Mrs. Cornelius O'Sullivan at 77 East 114th street and while on the way to a friend's house New Year's morning became separated from two friends who started with him. His family think he met with foul play.

Mr. Donohue is 60 years old.

Kansas After Harvesting Machine Trust TOPERA, Kan., Jan. 20 .- A concurrent

resolution in the Legislature to-day deals with the wheat harvesting machine trust. It is charged that prices have advanced \$5 on each machine since the trust was was organized, and the local dealers have been driven out of the field by the estab-lishment of branch houses. An investi-gation will be made and a bill passed, taxing he trust the same as other foreign corpora

.. NO COAL NEEDED ..

to prepare a delicious Soup with Maggi Bouillon & With a gas or oil stove to heat the water a delightful Soup cen be made in a few minutes -- far more delicate and delicious than in the ordinary way-with one or two spoon-

Maggi Bouillon

totally unlike tinned soups in flavor and delicacy # 4 size bottles, at all grocers and druggists.

"FALLING STAR" IS DEAD. She Was the Famous Indian Beauty, the

Favorite Model of New York Artists. LUZERNE, N. Y., Jan. 20.-Mrs. Annie Fuller, better known as "Falling Star." the noted Abeneki Indian beauty, died here last night. "Falling Star" was a favorite model for the artists of New York city, and was considered by them as a moperfect type of Indian beauty. She was in great demand for portraits and Indian life scenes. There is a fine bust of her at the Museum of Natural History in New York by Caspar Magee. She was well known at the sportsmen's exhibits, and in her tepee was a most successful saleswoman As a basket maker she was an expert. She was frequently invited by the society people in New York to attend their social teas, and in her Indian costume was the attrac-

and in her Indian costume was the attraction.

She was the granddaughter of Sebatis, the well-known Adirondack guide, a chief who boasted of his white friends, and so well known by hunters that a mountain of the Adirondacks was named for him also a station and post office on the Adirondack Railroad.

"Falling Star" never fully recovered from a railroad accident of last year, since which time she had been a cripple, though able to use her hands, and continued to weave her exquisite baskets. She way the sole support of an aged mother.

Cobituary Notes.

Lewis Mortimer Ballard, a New York jute bag manufacturer, died on Monday in his home at 383 Warburton avenue, Yonkers, after an illness of four months. He was in his sixty-sixth year and was unmarried. His only near relative, a nephew, is Arthur D. Ballard of Yonkers. Mr. Ballard was fond of outdoor sports. He won the first bicycle race ever ridden in America, on March 20, 1869. The race took place in New York city and Mr. Ballard kept the velocipede on which he rode to victory as a souvenir and a curiosity. He was a member of the noted American long-range rifle team of 1874-73-76, which abroad, and at home, defeased sli comers. He was the first American to receive a prize from the hands of a member of the royal family of England. This prize he won on Wimbledon Common in a rifle competition, and the presentation was made by Princess Louise. Funeral services will be held at his late bome this evening and the burial will be in Carmel Cemetery.

Thomas U. Harris of Bridgeton, N. J. died yesterday afternoon after a brief illness. He had been president of the Bridgeton National Bank since its organization and for many years was secretary of the Bridgeton Savings Fund and Building Association. He was also a trustee and all eider in the Second Presbyterian Church. A widow survives him, but no children. He was 71 years old.

Mrs. Rebecca Caroline Ames, widow of Frederick Ames, died in Boston yesterday she was a native of St. Louis, Mo., and the only child of James and Nancy Gay Blair. She was married to Mr. Ames in 1859. Mr. Ames died about ten years ago. The surviving children are Mrs. Robert C. Hooner, Helen Angier Ames, Miss Mary S. Ames, Mrs. Oliver F. Lothrop and John S. Ames.

William Knickerbocker Van Alen is dead in San Francisco. He was within one day of his eighty-sixth year. Mr. Van Alen went of San Francisco in 1849 and for years was an insurance agent, but had retired. He was a cousin of J. J. Van Alen.

Lieut, Frederick W. Greenleaf of the United States Navy in charge of the Hydrographic

Lieut, Frederick W. Greenleaf of the United States Navy in charge of the Hydrographic office in Savannah died yesterday of Bright's disease. He was a native of Maine. He was about 50 years old.

Detective Sergeant Weish Improving. Detective Sergeant Welsh, who was shot in the Black Cat café last Friday night. was greatly improved yesterday. Josephine Scherière, who is accused of shooting him, was held yesterday in \$3,000 hall by Magistrate Barlow in the Jefferson Market police court for examination next Tuesday

J. A. Zimmerman Kills Himself. STRACUSE, Jan. 20 .- Joseph A. Zimmer man, treasurer and ma ager of a cigar company, committed suicide in his private office this afternoon b taking carbolic acid. He was formerly manager of the Amos Flour Mills. He was about 50 years

A BREATHING SPELL

If the consumptive could only keep from getting worse it would be some encouragement.

Scott's Emulsion at least gives tired nature a breathing spell. The nourishment and strength obtained from Scott's Emulsion are a great relief to the exhausted system.

This treatment alone often enables the consumptive to gather force enough to throw off the disease altogether.

Scott's Emulsion brings strength to the lungs and flesh to the body.

Send for Free Semple. SCOTT & BOWNE. Chamists, on Part St., M. T.